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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198718
Party	Defendant Theofilos, John
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Date	04/05/2011
Attachments	IF IT DOESN'T EXCITE YOU WHY BOTHER-Answer.PDF ( 4 pages )(128868 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Serial No.: 85/079,245

Mark: IF IT DOESN'T EXCITE YOU. WHY BOTHER?

WILLIAM QUIGLEY,

Opposer,

Opposition No. 91198718

v.

JOHN THEOFILOS,

Applicant.

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**APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES**

Applicant, John Theofilos, through his undersigned attorney, answers and asserts his affirmative defenses to Opposer's, William Quigley's, opposition.

**ANSWER**

1. Admit that Quigley is an artist. Without knowledge as to the remaining allegations and therefore denied.

2. Without knowledge and therefore denied.

3. Without knowledge and therefore denied.

4. Without knowledge and therefore denied.

5. Admit that Quigley met and began a business relationship with Katherine Theofilos. Denied that Katherine Theofilos was the only other party to such relationship. Admit that John Theofilos invested in and had ownership in the business. Admit that Quigley abandoned the business relationship in 2010 and relinquished the business to Katherine Theofilos and John Theofilos. Denied as to the remaining allegations.

6. Without knowledge and therefore denied.

7. Admit.

8. Admit that John Theofilos and Katherine Theofilos are managing members of T Squad, LLC. Admit that John Theofilos is the father of Katherine Theofilos. Admit that Katherine Theofilos, John Theofilos and Quigley entered into a business relationship for the production of t-shirts bearing among other things the term “If it doesn’t excite you. Why bother?” in which John Theofilos was the sole source for funds for the project. Admit that Quigley withdrew from the business relationship in the summer of 2010 after discussions with John Theofilos regarding Quigley’s unauthorized and exorbitant expenditure of John Theofilos’ and Scraper, Inc’s funds. Denied that Applicant took sole control of the website Skrapper.com after Quigley withdrew from the business relationship in summer 2010. Admit that t-shirts are sold on the Skrapper.com website, including t-shirt’s bearing the term “If it doesn’t excite you. Why bother?” Denied as to the remaining allegations.

9. Admit that T-Squad is the owner of the Skrapper.com website. Denied as to the remaining allegations.

10. Admit.

**Likelihood of Confusion**  
**Section 2(d), 15 U.S.C. §1052(d)**

11. Applicant realleges and incorporates Paragraphs 1-10 herein.

12. Upon information and belief, Quigley did not use the term “If it doesn’t excite you, why bother?” on t-shirts or apparel before the business relationship with Katie Theofilos and John Theofilos, wherein the business, Scraper, Inc., used the term on apparel. Denied as to the remaining allegations.

13. Without knowledge and therefore denied.

14. Denied that the phrase “If it doesn’t excite you. Why bother?” is included in the painting attached at Exhibit “4.” Without knowledge as to the remaining allegations and therefore denied.

15. Without knowledge and therefore denied.

16. Denied.

17. Admit that T-Squad sells t-shirts that include the phrase “If it doesn’t excite you. Why bother?” after Quigley assigned all rights, if any, in the phrase to the business, Scraper, Inc. Denied as to the remaining allegations.

18. Without knowledge and therefore denied.

19. Denied.

**Fraud**  
**15 U.S.C. §1064**

20. Applicant realleges and incorporates his responses to Paragraphs 1-19 herein.

21. Without knowledge and therefore denied.

22. Denied.

23. Denied.

24. Admit.

25. Admit that the July 7, 2010, application states that Applicant’s first use of the term “If it doesn’t excite you. Why bother?” was July 1, 2009 for apparel. Denied as to the remaining allegations.

26. Denied that the hangtag includes Quigley’s mark “If it doesn’t excite you. Why bother?” Without knowledge as to the remaining allegations and therefore denied.

27. Denied.

28. Denied.

29. Denied.

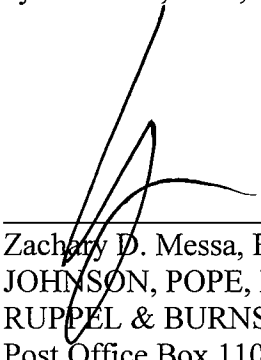
WHEREFORE, Applicant requests that Opposer's opposition be denied and the application to proceed to registration.

**FIRST AFFIRMATIVE DEFENSE**

Opposer assigned all rights, if any, in the common law phrase, "If it doesn't excite you. Why bother?" to Scrapper, Inc. Scrapper, Inc. assigned such rights to John Theofilos and T-Squad. As a result, Opposer does not have standing to oppose Applicant's registration.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail upon Lisa Ferri and Genevieve Scott, Mayer Brown, LLP, 1675 Broadway, New York, New York 10019 this 5<sup>th</sup> day of April, 2011.



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